Supreme Court, U.S.
FILED

001381 FEB 1 2001

OFFICE OF THE CLERK

No. 01- _____

IN THE

SUPREME COURT OF THE UNITED STATES

DOUGLAS L. MAXFIELD

Petitioner

VS.

COMMONWEALTH OF VIRGINIA

Respondent

On Petition For Writ Of Certiorari
To Circuit Court For
Lexington-Rockbridge County, Virginia

PETITION FOR WRIT OF CERTIORARI

Douglas L. Maxfield
12507 Scarlet Lane
Bowie, Maryland 20715
(301) 262-7514

---

27 pp

QUESTION(S) PRESENTED

I

WHETHER THE SUPREME COURT OF VIRGINIA ERRED IN UPHOLDING A CIRCUIT COURT'S DENYAL OF PETITIONER'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW, IN A VIRGINIA TRAFFIC CASE?

II

WHETHER A COURT, IN THE COMMONWEALTH OF VIRGINIA, CAN DEPRIVE PETITIONER OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW, TO ENHANCE LOCAL ADMINISTRATIVE EFFICENCY, IN THE PROCESSING OF A DOCKET?

III

WHETHER PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WAS ABRIDGED/DENIED?

IV

WHETHER PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO CALL FOR EVIDENCE AND WITNESSES IN HIS FAVOR?

V

WHETHER THE TRIAL COURT ERROR IN GRANTING COMMONWEALTH'S MOTION TO SUPPRESS/QUASH PETITIONER'S REQUEST FOR SUBPOENA DUCES TECUM WITHOUT A FINDING THAT THE SUBPOENA DUCES TECUM REQUEST WAS UNREASONABLE AND OPPRESSIVE?

VI

WHETHER THE TRIAL COURT OF RECORD, THE CIRCUIT COURT FOR LEXINGTON-ROCKBRIDGE COUNTY, VIRGINIA, PREJUDICE PETITIONER'S APPEALS PROCESS BY FAILING TO MAKE A RECORD OF THE TRIAL PROCEEDINGS?

VII

WHETHER THE TRIAL COURTS DENIAL OF A CONTINUANCE, AND LEAVE TO FILE A CORRECTLY FORMATTED REQUEST FOR A SUBPOENA DUCES TECUM PREJUDICE PETITIONER'S ABILITY TO CALL FOR EVIDENCE AND WITNESSES IN HIS FAVOR?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For causes from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to The petition and is
[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is
[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ___7___ to the petition and is
[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the highest state court to review a "Motion For Amended Petition For Appeal" appears at Appendix __8___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the highest state court to review the "Petition For Appeal" Appears at Appendix __9___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the Court of Appeals of Virginia appears at Appendix __6___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the Court of Appeals of Virginia appears at Appendix __2___ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The decision and sentencing of the Trial Court appears at Appendix __1___to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ , and a copy of the Order denying rehearing appears at Appendix _____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was September 6, 2000. A copy of that decision appears at Appendix ___7___ .

[X] A timely petition for rehearing was thereafter denied on the following date: November 3, 2000, and a copy of the order denying rehearing appears at Appendix __8 and 9_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL:	Page
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United States Const. 5th and 14th Amendments.	5,6&7

STATEMENT OF THE CASE

The Appellant, hereinafter referred to as the Petitioner, was issued a Virginia Uniform Summons on April 21, 1999 for the offense of speeding 77/65, with a trial date of June 23, 1999 in the General District Court (Traffic), Lexington-Rockbridge County, Virginia.

On May 10, 1999, Petitioner filed a request for issue of a Subpoena Duces Tecum, with the Clerk of the Court, for discovery. The District Court Judge, the Honorable Joseph E. Hess, in a letter, dated June 2, 1999, to the Commonwealth's Attorney, Gordon F. Saunders, stated in part - - - "**Please provide Mr. Maxfield with whatever information he is entitled to have**" - - -. The Commonwealth's Attorney, for Lexington-Rockbridge County, Gordon F. Saunders, **refused** to provide any of the discovery requested. Brady v. Maryland, 373 U.S. 83, 87, 226 Md. 422, 174 A 2d 167, the U.S. Supreme court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". U.S.C.A. Const. Amends, 5, and 14. Faretta v. California, 95 S. Ct. 2525, 422 U.S. 806 the U.S. Supreme Court held in part . . . "to have compulsory process for obtaining witnesses in his favor" . . . are part of the due process of law". Tot v U.S., 63 S.Ct. 1241, 319 U.S. 463, (1943). The Supreme Court noted "The procedural safeguards found in the Constitution and in the Bill of Rights stand as a constitutional barrier against thus obtaining a conviction" . . . and . . . "Compliance with these constitutional provisions, which of course constitute the supreme law of the land, is essential to due process of law, and a conviction obtained without their observance cannot be sustained".

"Due process of law, "which occurs in the Fifth and Fourteenth Amendments to United States Constitution as limitation of actions by United States government and States respectively, encompasses both protection of substantive rights, or "substantive due process," and protection of procedural fairness, or "procedural due process." U.S.C.A. Const, Amends. 5, 14. Ogle v Salamatof Native Ass/n, INC., 906 F. Supp. 1321 (D.Alaska 1995).

In Zinermon v. Burch, 494 U.S. at 125, 110 S.Ct. at 983, where the Court pointed out that Burch did not contend that the State's statutory procedure for placement was inadequate to ensure due process, but only that "Petitioner had failed to follow the procedure"; The Supreme Court held that "Burch's complaint was sufficient to state a claim under Section 1983 for violation of his procedural due process rights."

At trial on June 23, 1999, The Commonwealth Attorney, Gordon F. Saunders stated in Court: "**We had 200 cases on the Docket, if we had to spend this much time on each case we would never get through**" The Petitioner was found guilty in the General District Court (Traffic) and fined $ 36.00 plus Court Costs, and was advised of his right to appeal.

June 23, 1999 Defendant immediately appealed the case to the Court of Record, the Circuit Court for Lexington-Rockbridge County, Virginia.

June 24, 1999, Defendant, mailed a letter to the Clerk of the Circuit Court, "Subject request for issue of Subpoena Duces Tecum", for discovery. Again the Commonwealth's Attorney, for Lexington-Rockbridge County, Gordon F. Saunders, refused to provide the discovery requested.

Brady v. Maryland, 373 U.S. 83, 87, 226 Md. 422, 174 A 2d 167, the U.S. Supreme court held "that the suppression by the

prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". U.S.C.A. Const. Amends, 5, and 14. Faretta v. California, 95 S. Ct. 2525, 422 U.S. 806 the U.S. Supreme Court held in part . . . "to have compulsory process for obtaining witnesses in his favor" . . . are part of the due process of law". Tot v U.S., 63 S.Ct. 1241, 319 U.S. 463, (1943). The Supreme Court noted "The procedural safeguards found in the Constitution and in the Bill of Rights stand as a constitutional barrier against thus obtaining a conviction" . . . and . . . "Compliance with these constitutional provisions, which of course constitute the supreme law of the land, is essential to due process of law, and a conviction obtained without their observance cannot be sustained".

"Due process of law, "which occurs in the Fifth and Fourteenth Amendments to United States Constitution as limitation of actions by United States government and States respectively, encompasses both protection of substantive rights, or "substantive due process," and protection of procedural fairness, or "procedural due process." U.S.C.A. Const, Amends. 5, 14. Ogle v Salamatof Native Ass/n, INC., 906 F. Supp. 1321 (D.Alaska 1995).

In Zinermon v. Burch, 494 U.S. at 125, 110 S.Ct. at 983, where the Court pointed out that Burch did not contend that the State's statutory procedure for placement was inadequate to ensure due process, but only that "Petitioner had failed to follow the procedure"; The Supreme Court held that "Burch's complaint was sufficient to state a claim under Section 1983 for violation of his procedural due process rights."

September 1, 1999, at approximately 10:32 hours Petitioner was tried in a bench trial before the Honorable Judge Honts, of the Lexington-Rockbridge County Circuit

Court, on one count of speeding 77/65, in violation of Va. Code Section 46-2-870.

At the September 1, 1999 trial the Appellee submitted a motion to quash Petitioner's request for Subpoena Duces Tecum. Judge Honts granted Appellee's motion to quash on grounds that the request was not in proper format as required by the Virginia Supreme Court Rules.

Petitioner stated he could not proceed without discovery and requested leave of the Court to file a properly formatted request for Subpoena Duces Tecum and to reset the trial to a future date. Judge Honts denied Petitioner's motion.

September 7, 1999 at the sentencing hearing the calibration results, provided by Petitioner, showed that the speedometer was off by 5 miles per hour. The Court reduced the charge and found the Petitioner guilty of speeding 70 miles per hour in a 65 mile per hour zone.

September 29, 1999 Petitioner filed a NOTICE OF APPEAL to the Virginia Court of Appeals.

December 27, 1999 Petitioner filed a PETITION FOR APPEAL with the Virginia Court of Appeals.

March 10, 2000 the Court of Appeals of Virginia filed a FINAL ORDER, denying Petitioner's appeal.

March 15, 2000 Petitioner filed a PETITION FOR REHEARING. The rehearing before a three judge panel was held on June 12, 2000.

May 22, 2000 Petitioner filed a Notice Of Hearing For Oral Argument with the Court of Appeals of Virginia.

June 22, 2000 the Court of Appeals of Virginia three judge panel DENIED Petitioner's Appeal.

July 10, 2000 Petitioner file a NOTICE OF APPEAL to the Supreme Court of Virginia.

September 6, 2000 the Supreme Court of Virginia Dismisses Petitioner's petition.

September 14, 2000 Petitioner filed a PETITION FOR REHEARING in the Supreme Court of Virginia.

September 14, 2000 Petitioner filed a MOTION FOR AMENDED PETITION FOR APPEAL with the Supreme Court Of Virginia.

November 3, 2000 the Supreme Court of Virginia DENIED Petitioner's Petition For Rehearing.

November 3, 2000 the Supreme Court of Virginia DENIED Petitioner's Motion for Amended Petition.

REASONS FOR GRANTING THE WRIT

Petitioner, a resident of the State of Maryland, was denied DUE PROCESS OF LAW in the Virginia Courts.

Petitioner twice (on two separate occasions, District and Circuit Courts) requested items of discovery, and the same Commonwealth Attorney for Lexington-Rockbridge County, summarily dismissed both requests for discovery, and refused, and did not provide any of the discovery requested.

Additionally the Commonwealth Attorney, in refusing to provide the requested discovery, summarily dismissed the District Court Judge Hess's order to "provide whatever Mr. Maxfield is entitled to have."

By his actions, the Commonwealth's Attorney broke the legal system by failing to follow the Due Process of Law procedures mandated by the of the land, the Virginia law, and a Judge's Order requiring the Attorney to provide the requested discovery material.

Obviously the Commonwealth's Attorney's respect for Due Process Of Law is on the same level as the Germans when they lead innocent civilians to the gas chambers, and the Saigon Chief of Police as he drew his revolver and shot the North Vietnamese Prisoner of War in the head.

I not only respect the Constitution of the United States of America, I have spent a good portion of my life sworn to uphold it.

When a State denies a citizen from another State his Constitutional right to Due Process Of Law, it is proper to look to the U.S. Supreme Court to correct the problem.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Douglas L. Maxfield, Pro Se
12507 Scarlet Lane
Bowie, Maryland 20715
(301) 262-7514

Date: 5 Mar 01

VIRGINIA
IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA)		
	)	SPEEDING
	)	(77/65 m.p.h. zone)
v	)	Section 46.2-870
	)	
DOUGLAS L. MAXFIELD	)	
D.O.B. 02/16/40	)	

This day came again the Attorney for the Commonwealth, the defendant, Douglas L. Maxfield, who stands charged in a warrant with speeding 77/65 m.p.h. zone, did not appear after this case had been continued from September 1, 1999.

And the Court, having considered the evidence presented at the trial and the calibration papers subsequently faxed to the Court by the defendant, finds the defendant guilty of speeding 70/65 m.p.h. zone and he is hereby fined $ 50.00 plus the costs of these proceedings.

/s/
JUDGE

ENTERED: SEPTEMBER 7, 1999

BEST AVAILABLE COPY

VIRGINIA:

In the Court of Appeals of Virginia on Friday the 10th Day of March, 2000.

Douglas L. Maxfield,

Appellant,

Against Record No. 2339-99-3
Circuit Court No. CR99000405-00

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Rockbridge County

Before Judge Lemons

This petition for appeal has been reviewed pursuant to Code Section 17.1- 407 (C), recodifying Code Section 17-116.05:2(C), and is denied for the following reasons:

I. The record on appeal includes the trial court's order entered September 1, 1999, the order of conviction entered September 7, 1999, and the Written Statement of Facts approved by the trial court. The Commonwealth moved to quash the subpoena duces tecum files by appellant on several grounds, including the fact that the subpoena did not comply with the requirements of Rule 3A:12, the volume of requested items was unreasonable, some of

the requested items were not relevant to the proceedings, and some of the items were not able to be produced. The record indicates that the trial court granted the Commonwealth's motion to quash the subpoena duces tecum "for reasons stated to the record."

"The burden is upon the appellant to provide us with a record which substantiates the claim of error. In the absence thereof, we will not consider the point." Jenkins v. Winchester Dep't of Social Servs., 12 Va. App. 1178, 1185, 409 S.E.2d 16, 20 (1991). Where we do not have the benefit of a transcript of the proceedings, we can consider only that which is contained in the written statement signed by the trial judge. See id. Nothing in the written statement supports appellant's claim that the trial court erred in granting the Commonwealth's motion to quash. Therefore, appellant has failed to demonstrate error on the part of the trial court.

II. Appellant contends that the trial court erred in denying his "motion to grant leave . . . [to] submit a properly formatted request for issuance of a subpoena duces tecum . . . ." The

record indicates that appellant moved to dismiss the charges, which motion the trial court denied. Assuming arguendo that appellant also moved to continue the trial so that he could submit a new subpoena duces tecum, "[w]hether to grant or deny a continuance of a trial is a matter that lies within the sound discretion of a trial court, and its ruling will not be reversed on appeal unless it is plainly wrong." Cardwell v.Commonwealth, 248 Va. 501, 508, 450 S.E.2d 146, 151 (1994). The trial court allowed appellant an extension of time to produce a speedometer calibration certificate. The calibration indicated that the speedometer was off by 5 miles per hour, and appellant
was convicted of the reduced charge of going 70 miles per hour in a 65 mile per hour zone. "[T]he prejudice allegedly resulting from the denial of a continuance cannot be based upon mere speculation. Thus, absent a showing of prejudice to a defendant by the denial of a continuance, an appellate court will not find that a trial court abused its discretion." Id. at 509, 450 s.e.2d at 151. Appellant has failed to demonstrate that he suffered any prejudice by the trial court's denial of his motion for additional

time to file a subpoena.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to code § 17.1-407(d), recodifying code § 17-116/05"2(d). and rule 5a:15(a). if appellant files a demand for consideration by a three- judge panel, the demand should include a statement, not to exceed one typewritten page, identifying how this order is in error.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: /s/

Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 22nd Day of June, 2000.

Douglas L. Maxfield,

Appellant,

Against Record No. 2339-99-3
Circuit Court No. CR99000405-00

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Rockbridge County Before Judge Coleman, Retired Judges Brown and Sarver*

For the reasons previously stated in the order entered by this Court on March 10, 2000, the petition for appeal in this case hereby is denied.

This order shall be certified to the trial court.

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*Retired Judges J. Howe Brown, Jr. and Perry W. Sarver took part in the consideration of this case by designation pursuant to Code Section 17.1-400, recodifying Code Section 17-116.01.

A Copy,
Teste:
Cynthia L. McCoy, Clerk
By: /s/
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 6th day of September, 2000.

Douglas L. Maxfield,

Appellant,

Against Record No. 001804
Court of Appeals No. 2339-99-3

Commonwealth of Virginia,

Appellee.

From the Court of Appeals of Virginia

Finding that the petition for appeal does not contain a statement setting forth in what respect the decision of the Court of Appeals involves (1) a substantial constitutional question as a determinative issue, or (2) matters of significant precedential value, the Court dismisses said petition filed in the above- styled case. Rule 5a:17(c).

Justice Lemons took no part in the consideration of this case.

A Copy,

Teste:
David B. Beach, Clerk

By: /s/
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 3rd day of November, 2000.

Douglas L. Maxfield,

Appellant,

Against Record No. 001804
Court of Appeals No. 2339-99-3

Commonwealth of Virginia,

Appellee.

Upon a Petition for Rehearing

On September 18, 2000 came the appellant, in proper person, and filed a "Motion for Amended Petition for Appeal" in this case.

On consideration whereof, the Court denies the motion.

Justice Lemons took no part in the consideration of this motion.

A Copy,

Teste:

/s/
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 3rd day of November, 2000.

Douglas L. Maxfield,

Appellant,

Against Record No. 001804
Court of Appeals No. 2339-99-3

Commonwealth of Virginia,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 6th day of September, 2000 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Lemons took no part in the consideration of this case.

A Copy,

Teste:
/s/
Clerk